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July 10, 2017

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OFFICE OF GENERAL

2017 JUL 11 AM 7:02

RECEIVED
FEDERAL ELECTION
COMMISSION

Re: MUR 7246 – Response to Complaint from Buddy Carter for Congress, et al.

Dear Mr. Jordan:

We are writing this letter on behalf of our clients, Representative Buddy Carter, Buddy Carter for Congress (“Federal Committee”), and Paul Kilgore in his official capacity as Treasurer, and Friends of Buddy Carter for Senate (“State Committee”) (collectively, the “Respondents”), in response to the Complaint filed in the above-referenced matter by Lisa M. Ring, a Democratic operative who recently announced she was running as a Democratic challenger to Rep. Carter for the First Congressional District of Georgia. This Complaint is politically motivated and filed for publicity and political gain. The Complaint does not provide any credible evidence to support its claims other than publicly available contribution reports. The allegations are without merit and should be immediately dismissed.

The Federal Election Commission (the “Commission”) may find “reason to believe” only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the “Act”). See 11 C.F.R. § 111.4(a),(d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *Id.*

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The Complaint in this matter falsely alleges that the Respondents have engaged in a "conduit contribution scheme" to impermissibly transfer money from the State Committee to the Federal Committee by using the campaigns of Georgia state legislators and payments to a political consultant. Moreover, the Complaint alleges that such "conduit contributions" and other spending by the State Committee, violates the Act's prohibition on federal candidates and officeholders transferring or spending nonfederal funds in connection with an election. These allegations are specious, conclusory, and unsupported by law or facts.

The State Committee Has Not Made Illegal Transfers to Buddy Carter for Congress

The Complaint alleges that the State Committee made contributions to the campaign committees of Georgia state legislators who, in turn, contributed to Carter's Federal Committee. The Complaint also cites to a payment made by the State Committee to a vendor who later made a contribution to the Federal Committee. The Complaint alleges this was all a "scheme" to violate the Commission's regulation prohibiting transfers from a candidate's nonfederal committee to his or her federal committee,¹ and by doing so Respondents "knowingly" violated the Act by making or accepting "contributions in the name of another."²

As evidence for these allegations, the Complaint cites to a series of contributions from the State Committee, the campaigns of local state senators or the state senators personally, and the Federal Committee. For example, Complainant alleges that a contribution made by State Senator Ron Stephen's campaign to the Federal Committee on June 28, 2013 and a separate contribution made by the State Committee to Stephen's campaign committee seventeen months later was a "conduit contribution" from the State Committee to the Federal Committee. Similarly, the Complaint cites to a contribution from the campaign of State Senator Fran Millar to the Federal Committee on May 23, 2013 and a subsequent contribution from the State Committee to Millar's campaign over ten months later. These examples are beyond tenuous and do not provide even a modicum of evidence to support the Complainant's claims. Even those contributions made within a shorter time frame, *e.g.*, the contributions from the State Committee to Georgia House candidate Bruce Broadrick's campaign, State Senator Millar's campaign, and Senator Ellis Black's campaign,³ are not evidence of an orchestrated "scheme" to transfer funds from the State Committee to the Federal Committee.

Other examples of supposed conduit contributions the Complaint cites do not involve an actual conduit. A conduit is a person who receives and forwards an earmarked contribution to a candidate's authorized committee⁴ Mullis and Florence used their own personal funds to contribute to the Federal Committee. Thus, the contributions the State Committee made to their

¹ See 11 C.F.R. § 110.3(d).

² 52 U.S.C. § 30122.

³ The Committee notes that the contribution from Ellis Black for Senate was inadvertently misreported as being from Ellis Black. The Committee has amended its reports to correct this error.

⁴ 11 C.F.R. § 110.6(b).

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campaigns over nine months later by definition were not conduit contributions or evidence of a conduit scheme. Similarly, Loudermilk's State Committee contributed to Carter's Federal Committee; however, Carter's State Committee contributed to Loudermilk for Congress. Again, there is no evidence this was a conduit contribution.⁵

Finally, the Complaint cites to a \$1,000 payment made to Simons & Associates from the State Committee, and two contributions made by David Simons, the President of Simons & Associates, made before and after the \$1,000 payment as evidence of a conduit scheme. David Simons was a long time consultant to Rep. Carter in Carter's capacity as State Senator. Simons' firm was paid a retainer by the State Committee for several years of approximately \$500 per quarter (\$2,000/year) for services provided to Carter's state official office. Rep. Carter was still performing his duties as a State Senator during 2014, and the State Committee made one payment to Simons & Associates of \$1,000 during 2014 for services provided to the State Senate office. The contributions Simons made to the Federal Committee were from his personal funds, and have nothing to do with the payment his firm received for the services provided to Carter's state official office.

The Complaint essentially alleges these contributions were nothing more than transfers from the State Committee to the Federal Committee through intermediaries, and as such, Respondents made and accepted contributions in the name of another in violation of 52 USC § 30122. However, the Complaint provides no evidence of any "scheme" amongst the Respondents or any evidence that the contributions were "earmarked" in some way. A contribution is earmarked when there is "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee."⁶ In the past, the Commission has determined that contributions were earmarked where there was clear documentary evidence demonstrating a designation or instruction by the donor.⁷ Moreover, the Commission has rejected earmarking claims even where the timing of the contribution at issue appeared to be a significant factor, but the contributions lacked a clear designation or instruction.⁸

The Complaint provides no evidence of any "designations, instructions, or encumbrances" required to show the contributions were earmarked or intended to be conduit contributions. Moreover, the State Committee did not make any express or implied, or written or oral instructions or designations to the local officeholders when the State Committee made the contributions. The Complaint's sole basis for the allegations is the timing of the contributions, most of which were not even remotely temporal, and the amounts. This is not enough to find a

⁵ We note that the Carter's State Committee had sufficient federally permissible funds to make the contribution to the Loudermilk for Congress Committee.

⁶ 11 CFR § 110.6(b).

⁷ See MURs 4831/5274 (Nixon) (finding contributions were earmarked where checks contained express designations on memo lines), see also MUR 5732 (Matt Brown for U.S. Senate), MUR 5520 (Republican Party of Louisiana/Tauzin), MUR 5545 (Davis), MUR 4643 (Democratic Party of New Mexico) (rejecting earmarking allegations where there was no evidence of a clear designation, instruction, or encumbrance by the donor), and MUR 5125 (Perry) (finding no earmarking because the complaint contained only bare allegations of earmarking, but showed no designation, instruction, or encumbrance).

⁸ See MUR 5445 (Davis) and MUR 4643 (Democratic Party of New Mexico).

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"factual nexus between the transactions to conclude that the State Committee was impermissibly funneling its funds to the Federal Committee,"⁹ or that Respondents made and accepted contributions in the name of another.

Moreover, it is common for likeminded federal and state candidates and officeholders to make contributions to each other's campaigns, and the Supreme Court has made clear that "government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies." *McCutcheon v. Federal Election Comm'n*, 134 S.Ct. 1434, 1441 (2014) (citing *Citizens United v. Federal Election Comm'n*, 558 U. S. 310, 360 (2010)). In this case, it is hardly suspicious and certainly not illegal for former colleagues in the Georgia legislature to support each other's campaigns. As such, the Commission should find no reason to believe Respondents violated the Act by transferring nonfederal funds to the Federal Committee, and making contributions in the name of another.

Carter Did Not Direct Funds Outside the Limits and Prohibitions of the Act from the State Committee to the Federal Committee

Under the Act, Federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, Federal candidates, may not raise or spend funds in connection with an election for Federal office unless the funds are subject to the Act's limitations, prohibitions, and reporting requirements. 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61. Moreover, Federal candidates may not raise or spend funds in connection with any election other than an election for Federal office unless the funds are raised within the Act's contribution limits and are not from prohibited sources. 2 U.S.C. § 30125(e)(1)(B); 11 C.F.R. § 300.62. However, the Commission has stated that "[i]f the funds are not raised or spent in connection with an election, then the funds do not fall within the scope of Section 441i(e)." *See* Advisory Opinion 2003-20 (Reyes) at 2; *see also* AO 2009-26 (Coulson).

The Complaint alleges that "[t]he apparent conduit contributions are also impermissible spending of soft money to influence a federal election."¹⁰ However, as previously explained, Carter did not transfer funds from his State Committee to his Federal Committee via conduit contributions, and therefore the funds were not used to influence a federal election.¹¹ As for the contributions the State Committee made to the state campaigns, there were sufficient federally acceptable funds to cover the amount of the contributions at the time they were made. The Complaint does not provide any evidence to the contrary; it simply concludes that because the

⁹ *See* MUR 6985 (Zeldin for Senate, *et al.*), Factual and Legal Analysis at 7. We note that this matter is not public yet; however, Respondents' counsel represents the Respondents in MUR 6985. The Complaint in MUR 6985 contained an allegation that the Respondents illegally transferred funds from a State Committee to a Federal Committee through reciprocal contributions. The Commission found no reason to believe the State Committee improperly transferred funds to the Federal Committee through reciprocal contributions.

¹⁰ *See* Compl. At 4

¹¹ We note that the State Committee made a direct contribution of \$1,000 to the Federal Committee in March 2014. This contribution was the subject of a prior complaint and the Commission dismissed the matter. *See* MUR 6820 (Cater, *et al.*).

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State Committee did not provide "evidence" that it used an accounting method then it must have directed money outside the source and amount restrictions of the Act. This is burden shifting, and the Commission has made clear that such burden shifting and speculation is insufficient and does not establish that there is a reason to believe a violation occurred.¹² Due process and fundamental fairness dictate that the burden must not shift to a respondent merely because a complaint is filed with the Commission.¹³

Similarly, the Complaint alleges that certain expenses paid by the State Committee from May 2013 to September 2014, during the time Carter was a Federal candidate, were paid for with funds outside the Act's limits and prohibitions. Rep. Carter was still serving as a state officeholder during that time period and continued to perform official duties until early 2015. Under Georgia law, state officeholders are permitted to use campaign funds to defray costs associated with official duties. O.C.G.A. § 21-5-33. The Complaint's categorization of these expenses as "political" is pure speculation and innuendo. The expenses paid for out of the State Committee were in connection with Rep. Carter's official duties as a State Senator. The expenses were not in connection with a federal or non-federal election and there is no prohibition on a Federal candidate spending funds outside the limits and prohibitions of the Act on activities that are unrelated to an election. *See* Advisory Opinion 2003-20 (Reyes) at 2; *see also* AO 2009-26 (Coulson).¹⁴ As such, the Commission should immediately dismiss this allegation.

Conclusion

Carter and the State and Federal Committees have at all times complied with the provisions of the Act. The Complaint draws erroneous legal conclusions based purely on politically motivated speculation. We therefore respectfully request that the Commission find no reason to believe Carter, the State Committee and the Federal Committee violated the Act, and immediately dismiss the Complaint.

Respectfully submitted,

/s/Elizabeth Beacham White

¹² MUR 5467 (Michael Moore), First General Counsel's Report at 5 ("Purely speculative charges, especially when accompanied by a direct refutation, do not form the adequate basis to find reason to believe that a violation of [the Act] has occurred." (quoting MUR 4960 Statement of Reasons at 3))

¹³ *See* MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Daryl R. Wold and Commissioners David M. Mason and Scott E. Thomas, at 2 (rejecting OGC's recommendation to find reason to believe because the respondent did not specifically deny conclusory allegations, and holding that "[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents.")

¹⁴ The Complaint in MUR 6820 contained a similar allegation, which the Commission dismissed. *See* MUR 6820 (Carter, *et al.*).